

Claim 43 has been amended to substitute “to diabetic mammals promotes joint health, bone health, and anti-inflammation of joints” in place of “is useful for one or more benefits selected from the group consisting of joint health benefits, bone health benefits, anti-inflammation, and utility for diabetic mammals.” Support for this amendment is found in the specification at page 1, paragraphs one and two.

The Rejection under 35 U.S.C. § 101.

The Examiner rejected Claims 43-46 under 35 U.S.C. §101 as being the improper definition of a process. In a sincere effort to place the claims in better form for appeal, Applicants have cancelled Claims 44-46, and all claims dependent therefrom. Additionally, Applicants have amended Claim 43 to replace the word “use” with the word “administration. Finally, Applicants have clarified the remainder of the claim language by using the phrase “information that administration of the composition to a diabetic mammal promotes joint health, bone health, and anti-inflammation of joints.” Applicants respectfully submit that the forgoing amendments overcome the rejection under 35 U.S.C. §101 and place the claims in better condition for allowance.

The Rejection under 35 U.S.C. §112

The Examiner has rejected Claims 1, 13, 22 and 34 under 35 U.S.C. §112 as indefinite. In a sincere effort to place the claims in better form for appeal, Applicants have cancelled Claims 13 and 22. Moreover, Applicants have amended Claim 1 to eliminate the term “precursors of methylsulfonylmethane.” Thus, Applicants respectfully assert that these amendments overcome the rejection under 35 U.S.C. §112, second paragraph, and as such, place the claims in better condition for appeal.

Provisional Obviousness-type Double Patenting Rejections

Claims 1, 2, 4, 7-14, 16 and 19-50 have been provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over the claims of commonly assigned U.S. Patent Application Serial Nos. 09/760,280, 09/586,520, 09/586,284, and 09/586,514. To simplify the issues in the present application, Applicants concurrently submit with this response the appropriate Terminal Disclaimer over the copending applications. In submitting this Terminal Disclaimer, Applicants state for the record that this Disclaimer is not an admission of obviousness in view of the cited U.S. application. *Quad Envl. Corp. v. Union San.*

Dist., 20 USPQ2d 1392 (Fed. Cir. 1991). Thus, Applicants respectfully submit that this overcomes the double Patenting rejection and places the claims in better form for appeal.

The Rejection Under 35 U.S.C. §103

The Examiner has rejected Claims 1, 2, 4, 7-14, 16 and 19-50 as being obvious under 35 U.S.C. §103. To place the claims in better form for consideration on appeal, Applicants have cancelled Claims 10, 13, 14, 16, 19-42 and 44-50. Additionally, Applicants have amended independent Claims 1 and 43. As such, Applicants respectfully assert that these amendments overcome the rejection under 35 U.S.C. §103, and in any event, place the claims in better form for consideration on appeal.

CONCLUSION

In order to place the claims in better form for appeal, Applicants respectfully request that the Examiner allow the amendments as presented herein.

Respectfully submitted,



S. Robert Chuey
Attorney for Applicants
Registration No. 39,140

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Cincinnati, Ohio
Tel: 513-634-0102

Attachment: Version with Markings to Show Changes Made

Terminal Disclaimer

Version with Markings to Show Changes Made

Please amend claim 1 as follows:

1. (Amended) A beverage composition comprising:

- a) a chondroprotective agent selected from the group consisting of cartilage, aminosugars, glycosaminoglycans, methylsulfonylmethane, ~~precursors of methylsulfonylmethane~~, S-adenosylmethionine, and mixtures thereof;
- b) a sweetening agent selected from the group consisting of sorbitol, mannitol, xylitol, erythritol, malitol, maltose, lactose, fructooligosaccharides, lo han guo, stevioside, acesulfame, ~~aspartame~~, sucralose, saccharin, xylose, arabinose, levulose, isomalt, ribose and mixtures thereof; and
- c) at least about ~~40%~~ 75% water, by weight of the composition; and
- d) less than about 18 grams total carbohydrate per every 230 milliliters of the composition.

11. (Amended) A composition according to Claim ~~10~~ 9 further comprising one or more nutrients.

12. (Amended) A composition according to Claim ~~10~~ 9 further comprising one or more omega-3-fatty acids.

43. (Amended) A kit comprising:

- a) a composition according to Claim 1; and
- b) information that ~~use~~ administration of the composition ~~is useful for one or more benefits selected from the group consisting of joint health benefits, bone health benefits, anti-inflammation, and utility for diabetic mammals~~ to mammals, including those with diabetes, promotes joint health, bone health, and anti-inflammation of joints.